

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIE ALLEN MERRIWEATHER,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 183469

Recorder's Court

LC No. 94-11475

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

Defendant pled guilty to a charge of prison break, MCL 750.193; MSA 28.390, and now claims ineffective assistance of counsel. To prevail on a claim of ineffective assistance of counsel, defendant must first show that counsel's performance was deficient and that, under an objective standard of reasonableness, counsel made an error so serious that counsel was not functioning as an attorney as guaranteed under the Sixth Amendment. The alleged deficiency must be prejudicial to the defendant. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). In the context of a guilty plea, this Court's only task is to determine whether defendant tendered a plea voluntarily and understandingly. *People v Thew*, 201 Mich App 78, 89; 506 NW2d 547 (1993).

Where, as here, defendant has failed to move for a new trial or evidentiary hearing regarding the issue of ineffective assistance of counsel, appellate review is limited to the present record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973). In this case, defendant acknowledges that his counsel gave him advice which was in no way deficient. The theoretical possibility that counsel's advice might have been lacking because defendant was incarcerated at some distance from counsel's office does not furnish a sufficient basis for finding the prerequisite prejudice or that in any other respect defendant's plea was less than understanding and voluntary.

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald

